

February 19, 2014

By ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28

Dear Ms. Dortch:

Vimeo, LLC (“Vimeo”), joined by Cogent Communications, Inc., Contextly, Inc., Distinc.tt¹, Dwolla, Inc., Engine Advocacy, Kickstarter, Inc., OpenCurriculum, Inc., and Tumblr, Inc. (collectively and together with Vimeo, “we” or “us”) submit this letter to summarize their key areas of concern that remain over the Federal Communications Commission’s (the “Commission”) proposed open Internet rules. For the reasons we have previously expressed in this proceeding,² it is vitally important to our businesses³ and users that the rules specifically address each of these issues.

Bright Line Rules. As we understand it, the current rule will categorically ban certain practices that the Commission believes are *per se* harmful to consumers and innovation, such as “paid prioritization.” To ensure that the rules sufficiently cover *per se* harmful acts, we believe that:

1. The bans on discrimination and throttling should apply to discrimination directed at whole classes of applications (*e.g.*, video, voice-over-IP, latency-sensitive applications, etc.), not just to discrimination targeting specific applications.
2. The exception for reasonable network management should require network management to be as application-agnostic as possible (*i.e.*, carriers should not differentiate between applications or classes of applications).

If our service is throttled, we cannot offer a high-quality experience to our users. This in turn impairs our ability to compete and obtain funding. It does not make a

¹ Distinc.tt is operated by Belkin Interactive, LLC.

² See, *e.g.*, Notice of Ex Parte Meeting of Gigi Sohn, Protecting and Promoting the Open Internet, GN Docket No. 14-28, July 18, 2014, available at <http://apps.fcc.gov/ecfs/comment/view?id=6018184364>; Notice of Ex Parte Meeting of Marvin Ammori, Protecting and Promoting the Open Internet, GN Docket No. 14-28, August 6, 2014, available at <http://apps.fcc.gov/ecfs/comment/view?id=6018252766>; Notice of Ex Parte Meeting of Kickstarter, et al., Protecting and Promoting the Open Internet, GN Docket No. 14-28, May 8, 2014, available at <http://apps.fcc.gov/ecfs/comment/view?id=6017627355>.

³ In the case of Engine Advocacy, the rules will affect its members, who are startups.

difference if other, similar applications share the same fate, or whether we (and, potentially, our competitors) are throttled because a carrier is managing its network. The 2010 Open Internet rules provided these important protections. The Commission's new rules should do the same.

3. "Zero-rating" should not be permitted where (a) it is paid for by edge providers; or (b) it is offered to selected applications within a class to the exclusion of others, even if there is no payment involved.

The Commission has recently heard from numerous entities highlighting the need for strong rules protecting businesses and users from the practice of "zero rating."⁴ As many of us have explained in our filings, our companies would not be able to pay for special treatment—whether in the form of paid prioritization or zero-rating. Consumers react strongly to zero-rating because it looks like a bargain. Once some applications are zero-rated, competing applications that count against a consumer's cap will be at a huge disadvantage. Thus, the harm to startups is just the same as the harm caused by paid prioritization. The Commission's 2010 Open Internet rules banned zero-rating against a fee. There is no reason to reduce the level of protection now. Similarly, it does not matter whether users stop using our services because carriers speed up competing applications or exclude them from a consumer's bandwidth cap. Either way, we are at the mercy of the carriers, who, by virtue of their terminating monopolies, have the ability to pick winners and losers in the market. This is exactly what network neutrality rules are designed to prevent.

General Conduct Rule. The general conduct rule should contain clear guideposts that promote certainty and make it feasible for startups and small companies to bring complaints when they are being harmed by unfair conduct. In particular, the rule should primarily take into consideration whether the challenged practice:

1. Preserves consumer choice.
2. Does not discriminate against particular applications or classes of applications.
3. Keeps application development and innovation costs low.
4. Promotes freedom of expression.⁵

We believe that the 2010 Open Internet Order's approach to non-discrimination got it right. We urge the Commission to use the same formulation now. Market participants are already familiar with these factors, and the rules have worked well in the past.

⁴ See, e.g., Letter from Nick Grossman, Union Square Ventures, GN Docket Nos. 14-28 & 10-127, Feb. 18, 2015; Letter from Peter Micek, Senior Policy Counsel, Access, GN Docket Nos. 14-28 & 10-127, Feb. 18, 2015, <https://www.accessnow.org/FCC-zero-rating>.

⁵ This approach is described in more detail in Barbara van Schewick, Analysis of Proposed Network Neutrality Rules, Feb. 18, 2015, pp. 10-19 & Attachment to Barbara van Schewick Ex Parte Letter filed Feb. 18, 2015, GN Docket Nos. 14-28.

As we explained throughout the proceedings, startups lack dedicated regulatory lawyers and the wherewithal to navigate regulatory proceedings. We need clear, simple rules that allow us to bring complaints. The 2010 framework would allow us to do so.

Interconnection. The rules should specifically cover interconnection, which is increasingly becoming the Internet's congestion point. Specifically, the Commission should prohibit carriers from charging interconnecting networks, application providers, and content delivery networks (CDNs) fees for access to their networks and clarify that carriers cannot use practices related to interconnection to evade the Commission's network neutrality rules.

There is strong evidence that millions of consumers are suffering from poor service during peak hours as a result of carriers' brinkmanship games at interconnection.⁶ These problems do not just affect companies like Netflix. Small companies that do not use CDNs, whose content enters carriers' networks through congested links, suffer from poor quality of service. Larger companies that distribute content through a CDN or buy Internet service from a provider that pays for interconnection face higher costs: Since last-mile carriers have a monopoly over access to their subscribers, any fees for interconnection are likely to be excessive and will be passed on to companies by their CDN provider or Internet service provider.

Respectfully submitted,

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⁶ See Letter of Vimeo, LLC, MB Docket No. 14-57, GB Docket Nos. 14-28 & 10-127, Feb. 19, 2015.